



UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 8

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SENT VIA REGULAR MAIL

Mr. Bryan Bowker, Regional Director
U.S. Department of the Interior
Bureau of Indian Affairs
Western Regional Office
2600 N. Central Avenue
4th Floor Mailroom
Phoenix, Arizona 85004-3050

Re: BIA Proposed Hecla Apex Site Pond 2 Activities and Long-term Monitoring Plan

Dear Mr. Bowker:

This letter responds to the Bureau of Indian Affairs' (BIA) recent assessment of and planned activities for the Hecla Mining Company Apex Site Pond 2 (Site) located on the Shivwits Band of Paiute Indian Reservation. During a call on October 31, 2013, the BIA discussed with the U.S. Environmental Protection Agency (EPA) its plans to develop a real estate appraisal, conduct additional ground water monitoring, and sample the capped wastepile at the Site as a precursor to developing a long-term monitoring plan. The EPA has no objection to the BIA preparing the appraisal and installing additional ground water monitoring wells. The EPA objects strongly, however, to jeopardizing the integrity of the cap to sample previously characterized waste. The capped wastepile approved by the EPA as the Site remedy in 2004 is working as designed. Revisiting its content or containment at this time is a needless exercise. The EPA requests, based on the reasons detailed below, that the BIA forego any plans to sample the wastepile and expeditiously conduct the other activities proposed to develop a monitoring plan for the Shivwits Band of Paiute Indian Tribe's (Band) consideration. It is in the best interest of the Band to have a long-term Site monitoring plan finalized and in effect by the end of the calendar year when the EPA will determine whether to close the order currently requiring Hecla to monitor the Site.

Background

The EPA and Hecla negotiated an administrative order on consent in 2004 pursuant to section 7003(a) of the Resource Conservation and Recovery Act to address any threat to the environment and public health associated with releases from Hecla's storage of solid waste at the Site. The EPA approved Hecla's plan to cap the wastepile following extensive sampling and analyses of the waste materials. The EPA determined that capping was the most economic means of closing the wastepile in a manner protective of human health and the environment. Hecla has monitored the cap since its construction with no evidence of discernible settling or seepage. In May 2011, Hecla asked the EPA to close the order on the basis that it had completed its obligations under the order and related closure work plan.

In response to Hecla's request to close the order, the EPA initiated discussions with the Band, the BIA, and Hecla to develop a long-term monitoring plan independent of the order to ensure the Site's future protectiveness. Hecla is willing to continue monitoring the Site in the same manner as performed under the order. The BIA hired a consultant in June 2013 to prepare a long-term monitoring plan independent of the plan Hecla prepared. The BIA also requested that the consultant prepare an environmental risk and impact analysis, clean closure cost estimate, and real estate appraisal. The BIA stated during the call that it is no longer advocating the removal of the wastepile based on the clean closure estimate of 40 million dollars. Prior to developing the monitoring plan, the BIA's consultant recommends installing additional ground water wells and extracting soil samples from the capped wastepile. While the EPA supports the BIA in its effort to prepare an informed monitoring plan, it is imperative that no field activities conducted for this purpose impair the integrity of the existing cap that has been working as designed to preserve containment. It also is important that the BIA's proposed monitoring plan be both timely and acceptable to Hecla to benefit the Band as no mechanism other than the order exists to compel Hecla to monitor the Site.

Wastepile Sampling

The BIA's consultant desires to drill through the cap to characterize the wastepile. The EPA opposes this activity as it threatens to compromise the integrity of the existing cap, and the effectiveness of the overall Site remedy. Any activity in and around the cap could penetrate the liner creating a conduit for the migration of contaminants that the cap was engineered to preserve. The Site has been previously characterized to support the remedy and there is no evidence of liquid migration, much less ground water contamination. Should the BIA proceed with this proposed field work over the objection of the EPA, the EPA requests that in addition to the Band, the BIA obtain Hecla's consent as the legal entity responsible under the order for the cap's operation and maintenance. In addition, any release following BIA's drilling may result in RCRA or CERCLA liability.

The cap is technically engineered to preserve containment, and thus is the appropriate remedy regardless of the types of waste contained. The EPA, as the federal agency authorized to prescribe environmental remediation measures, approved capping the waste in place following a comprehensive analysis of the waste material spanning several years. While the BIA's consultant questions the amount of organic versus physical properties sampled in the final sampling plan, the EPA, in investigating the Site and ultimately approving the cap, focused on whether a release of *any* type had occurred. Similarly, the consultant's questions regarding the presence of volatile organic chemicals and trace concentrations of acetone, gasoline, and other hydrocarbons in the wastepile, likely a result of the asphalt liner and products historically stored on Site, are immaterial as to the appropriateness of the cap. Regardless of whether a release consists of organic or inorganic materials, the EPA would respond the same by removing the free liquids and monitoring attenuation to prohibit off-site migration. The existence of organic materials in the wastepile in no way diminishes the cap's function to preserve containment and protect human health and the environment.

The capped wastepile is consistent with the original 1983 lease agreement between the Band and St. George Mining Company and subsequent amendments. The September 25, 1995, lease amendment between the Band and Hecla provides that the Site may be used as an impoundment for the permanent storage of substances including mined ores, wastes, contaminated soils, and for such other substances

as may be excavated and impounded from lessee's industrial operations on and in the immediate vicinity of the property. A subsequent lease amendment states waste dumps or tailings impoundments shall be covered by capping with a suitable material. The lease documents do not limit permanent storage to solid waste, Bevill-exempt hazardous waste or inorganics. The lease was renewed in 2008 for an additional 25 years with no changes to its terms, conditions, or lease rate.

Ground Water Monitoring

Despite the Site's prior comprehensive ground water evaluation, the EPA does not object to BIA funding and installing two additional groundwater monitoring wells to further study the geohydrology surrounding the Site so long as this activity does not delay the implementation of the long-term Site monitoring plan. In addition, any Site work to install the wells must be performed in a manner to avoid impacting the integrity of the cap, aquatard, liner and surrounding berms.

Historical ground water monitoring results at the Site consistently indicate that there has not been a release from the cap. Beginning as early as 1983, groundwater monitoring wells were installed at the Site. Groundwater sampling, pump and recovery testing, and well drilling occurred between 1983 and 2003. Pursuant to an order issued to Hecla by the EPA in 1999, to fully characterize the waste, significant consideration was given to groundwater, including sampling to determine whether a migration pathway existed below the liner and posed a potential threat to groundwater. At the EPA's request, Hecla installed a shallow groundwater monitoring well down gradient from the Site at the point of contact with the underlying bedrock to determine the existence of any appreciable liquid contamination. No liquid was found. Additional shallow wells were installed and monitored, with the monitoring results indicating that no release from the cap has occurred. The EPA confirmed during a site visit in October 2001, that there was no seepage migration from the Site. In May 2005, EPA's geohydrologist determined that "the sandstone bedrock is several hundred feet thick and serves as an aquitard to the much deeper aquifer (ground water is greater than 200 feet below the ground surface), as such there is virtually no possibility that, if liquids did migrate from the unit that the deep groundwater would be impacted."

BIA's consultant agrees that the Site is fairly well protected from ground water contamination according to the prevailing geologic model, and that the deep aquifer is approximately 200 feet below the surface. The geologic conditions identified by the BIA's consultant were evaluated in formulating the geologic Site model determined to be protective by the EPA, Hecla, and the BIA's former consultants Ninyo & Moore.

Appraisal

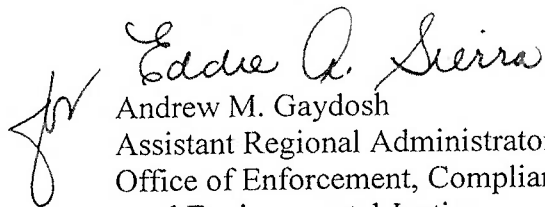
The BIA is preparing the appraisal to potentially adjust Hecla's annual lease rate for the Site based on the market value for trust or restricted tribal lands. The BIA also may use the appraisal to establish a permanent loss value for Hecla to pay the Band. The BIA plans to obtain a market value for the Site in its "as is" condition with the permanent wastepile and, alternatively, its free and clear value based on best possible use using the 100 acres surrounding the Site in addition to the 8-acre Site. The BIA planned to complete the appraisal by December 2013. Because the appraisal and its use are beyond the EPA's purview, the EPA has no objection to this Site activity provided that it does not impede the parties' collective goal of developing and implementing a long-term Site monitoring plan.

Conclusion

The EPA is committed to working with the BIA, the Band, and Hecla to establish a long-term monitoring mechanism to provide the monitoring necessary to ensure public health and environmental protection after the order is closed. Following Hecla's request to close the order in 2011, the EPA arranged a meeting and site visit in 2012, with the Band, the BIA, and Hecla representatives to discuss the Band's concerns with the wastepile remaining permanently on Site. The EPA postponed for a year its initial December 2013 timeframe for considering whether to close the order to accommodate the BIA's interest in proposing a monitoring plan on behalf of the Band. Developing a long-term monitoring plan along with institutional controls is the appropriate next step to ensuring long-term Site protectiveness. The EPA requests that the BIA conclude its preliminary activities and prioritize developing a plan for the Band's consideration prior to the EPA deciding whether to close the order at the end of this calendar year.

If you have questions or concerns, please do not hesitate to phone me at (303) 312-6051. If your staff has questions, please have them contact David Duster for technical issues at (303) 312-6665, and Amy Swanson for legal questions at (303) 312-6906.

Sincerely,


Andrew M. Gaydosh
Assistant Regional Administrator
Office of Enforcement, Compliance,
and Environmental Justice